

**105 KAR 1:420. 401(h) account established under 26 U.S.C. 401(h).**

RELATES TO: KRS 61.701, 61.702, 61.645(9)(g)

STATUTORY AUTHORITY: KRS 61.702, 61.645(9)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852 and to conform to federal statutes and regulations. Pursuant to the provisions of KRS 61.702(2)(b)(5), as amended by 2008 Extra Sess. Ky. Acts ch. 1, sec. 24 and of KRS 61.645, this administrative regulation establishes, effective September 1, 2008, a separate 401(h) account under 26 U.S.C. 401(h) within each of the following: the Kentucky Employees Retirement System Trust Fund, the State Police Retirement System Trust Fund, and the County Employees Retirement Trust Fund.

Section 1. Definitions. (1) "Dependent" is defined by the Internal Revenue Code, 26 U.S.C. 152, excluding subsections (b)(1), (b)(2), and (d)(1)(B).

(2) "Medical expense" means expense for medical care as defined by 26 U.S.C. Section 213(e)(1) of the Internal Revenue Code.

(3) "Retired", for purposes of eligibility to receive the medical benefits described in 26 U.S.C. 401(h), means:

(a) An employee is eligible to receive benefits under the Kentucky Retirement Systems;

(b) The employee is not still employed by the employer; and

(c) A separation from employment has occurred.

(4) "Systems" means the retirement systems administered by Kentucky Retirement Systems.

Section 2. The purpose of the 401(h) account established under 26 U.S.C. 401(h) in each of the systems shall be to pay part of the subsidy for health benefits that are otherwise payable from the health insurance fund. The 401(h) account shall be used only to the extent that funds are not available from the health insurance fund.

Section 3. The one (1) percent mandatory contribution established by KRS 61.702(2)(b) shall be deposited in the separate account of each system trust fund, respectively. These contributions are reasonable to pay medical expenses as required by 26 C.F.R. 1.401-14(c)(3).

Section 4. The health benefits shall be subordinate to the retirement benefits provided by the systems. (No life insurance protection is provided by any system.) This requirement shall not be satisfied unless the actual contributions to the 401(h) accounts established under 26 U.S.C. 401(h) do not exceed twenty-five (25) percent of the total actual contributions to the systems (other than contributions to fund past service credits), determined on an aggregate basis since the inception of the 401(h) accounts established under 26 U.S.C. 401(h).

Section 5. Amounts in the 401(h) accounts established under 26 U.S.C. 401(h) shall be for the exclusive purpose of paying medical expenses for retirees, their spouses, and dependents. Amounts in the 401(h) accounts established under 26 U.S.C. shall not be diverted for other purposes.

Section 6. Any amounts in the 401(h) accounts established under 26 U.S.C. 401(h) shall revert to the employers upon satisfaction of all liabilities for medical benefits.

Section 7. Employees shall not have an individual interest in the 401(h) accounts established under 26 U.S.C. 401(h).

Section 8. The 401(h) accounts established under 26 U.S.C. 401(h) may be commingled with the pension assets of the trust funds for investment purposes. Investment earnings shall be credited to the 401(h) accounts established under 26 U.S.C. 401(h) on a reasonable basis.

Section 9. Administrative and other expenses shall be charged to the 401(h) accounts established under 26 U.S.C. 401(h) on a reasonable basis. (35 Ky.R. 979; Am. 1729; eff. 2-6-2009; 39 Ky.R. 72; 753; 10-24-2012.)